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7 **BEFORE THE ARIZONA SUPREME COURT**

8 **PETITION TO ADOPT** : Supreme Court No.
9 **PROPOSED RULE 39 -- A RULE** :
10 **FOR DEALING WITH NATURAL** :
11 **DISASTERS** :
12 _____ :

13 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State
14 Bar of Arizona Board of Governors petitions the Supreme Court to adopt a new
15 rule, Rule 39, and its comments, as set forth in the attached proposed Rule 39,
16 Ariz.R.Sup.Ct.

17 **I. A BRIEF HISTORY LEADING TO THE NEW RULE**

18 In the wake of Hurricane Katrina, many states, including Arizona, adopted
19 temporary court rules and other measures to permit Louisiana lawyers to relocate
20 to other jurisdictions and continue to serve the interests of their Louisiana clients,
21 without running afoul of prohibitions in those jurisdictions on the unauthorized
22 practice of law. The American Bar Association has prepared a model Rule
23 (informally referred to as the "Katrina Rule"), which would serve to give the
24 highest courts of states a more permanent authority to adopt similar measures in
25 response to natural disasters, either in that state or elsewhere. This model rule

1 was recently approved by the ABA House of Delegates at the mid-year meeting
2 in Miami in 2007.

3 **II. STATEMENT OF THE ISSUE**

4 The issue is simply whether the Arizona Supreme Court should adopt a
5 new Rule 39, the text of which accompanies this reporting form and which is
6 derived from the ABA Model Rule, to deal with natural disasters.
7

8 **III. ARGUMENT**

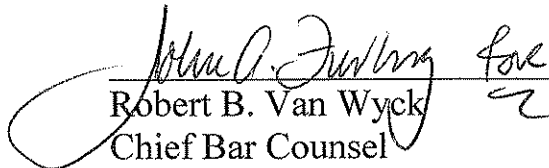
9 Proposed Rule 39, which accompanies this Petition (see Attachment A),
10 has been adapted for Arizona from the ABA Model Rule on this subject. The
11 adoption of this Rule would give the Arizona Supreme Court authority to permit
12 lawyers to practice temporarily in this jurisdiction on a *pro bono* basis to provide
13 legal services to Arizona residents, following a determination that a natural
14 disaster requiring that has occurred. The rule would also permit lawyers from
15 jurisdictions in which a natural disaster has been found to have occurred to
16 relocate their practices here, temporarily, without being found to be engaged in
17 the unauthorized practice of law.
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19 The Board of Governors for the State Bar of Arizona voted on this issue at
20 its April 27, 2007 meeting. After motion and discussion, the Board unanimously
21 voted to authorize the filing of this Rule 28 Petition.
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1 **IV. CONCLUSION**

2 The adoption of the proposed Rule 39 would increase the availability of
3 legal services to the public, improve the functioning of the legal system of
4 justice, and improve the quality of legal services in times immediately following
5 disaster. The State Bar Board of Governors respectfully request that this court
6 adopt the proposed new Rule 39 and its comments, as reflected in the attachment
7 to this Petition.
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9

10 **RESPECTFULLY SUBMITTED** this 5th day of November 2007

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12 
13 Robert B. Van Wyck
14 Chief Bar Counsel
State Bar of Arizona

15 Electronic copy filed with the
16 Clerk of the Supreme Court of
17 Arizona this 5th day of
November 2007

18 by: Kathleen Lundgren
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ATTACHMENT “A”

**Proposed New Rule 39,
Rules of the Arizona Supreme Court ¹**

Rule 39. Provision of Legal Services Following Determination of Major Disaster

(a) Determination of existence of major disaster. Solely for purposes of this Rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(1) the State of Arizona and whether the emergency caused by the major disaster affects the entirety or only part of the State, or

(2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) of this Rule shall extend only to lawyers who principally practice in the geographical area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) Temporary practice in this jurisdiction following major disaster. Following the determination of an emergency affecting the justice system in the State of Arizona pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in Arizona are in need of *pro bono* service and the assistance of lawyers from outside Arizona is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Arizona on a temporary basis. Such legal services must be provided on a *pro bono* basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. The provision of such legal services shall be supervised by a lawyer assigned and supervised through an established not-for-profit bar association, *pro bono* program or legal services organization or through such other organization(s) specifically designated by this Court.

¹ Rule 39 is currently designated as "RESERVED."

(c) Temporary practice in this jurisdiction following major disaster in another jurisdiction. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in that affected jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) Duration of authority for temporary practice. The authority to practice law in the State of Arizona granted by paragraph (b) of this Rule shall end when this Court determines that the conditions caused by the major disaster in the State of Arizona have ended, except that a lawyer then representing clients in Arizona pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. The lawyer shall not, however, thereafter accept new clients. The authority to practice law in the State of Arizona granted by paragraph (c) of this Rule shall end sixty (60) days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) Court appearances. The authority granted by this Rule does not include authority to appear in court or before any other tribunal except:

(1) pursuant to the provisions of Rule 38(a) of these Rules for securing admission *pro hac vice* and, if such authority is granted, any fees for securing such admission shall be waived: or

(2) if this Court, in any determination made under paragraph (a) of this Rule, grants blanket permission to appear in all designated courts and other tribunals in this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included in such determination, any fees for securing admission *pro hac vice* shall be waived.

(f) Disciplinary authority and registration requirement. Lawyers providing legal services in the State of Arizona pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Arizona Rules of Professional Conduct, as provided in Rule ER 8.5 of those Rules. Lawyers providing legal services in the State of Arizona under paragraphs (b) or (c) shall,

within thirty (30) days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to, and in accordance with, the provisions of this Rule shall not be considered to be engaged in the unauthorized practice of law in the State of Arizona.

(g) Notification to clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits or restrictions on that authorization, and that they are not authorized to practice law in the State of Arizona except as permitted by this Rule. They shall not state or imply that they are otherwise authorized to practice law in the State of Arizona.

COURT COMMENT

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time, interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal services needs as a result of the disaster or, through circumstances independent of the disaster, whose legal services needs are temporarily unmet because of the disruption of the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices, or both, provided the legal services are provided on a *pro bono* basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph (a)(1), this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in the State of Arizona, or in a part of the State, for purposes of triggering paragraph (b) of this Rule. The Court may, for example, determine that the entirety of the State

has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide *pro bono* legal services to residents of the State of Arizona following determination of an emergency caused by a major disaster has occurred notwithstanding that they are not otherwise authorized to practice law in Arizona. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of those lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers, as defined in Rule 38 of these Rules. Alternatively, this Court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an *emeritus* lawyer from another United States jurisdiction may provide *pro bono* legal services on a temporary basis in this jurisdiction provided that the *emeritus* lawyer is authorized to provide *pro bono* legal services pursuant to that jurisdiction's *emeritus* or *pro bono* practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis under the provisions of Rule ER 5.5(c) of the Arizona Rules of Professional Conduct.

[4] Lawyers authorized to practice in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster there, and who are not disbarred, suspended from

practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice in the affected jurisdiction. For purposes of this Rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and complete pending legal matters. Under paragraph (d), this Court determines when those conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of Arizona under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph (c) will end sixty (60) days after this Court makes such a determination with regard to an affected jurisdiction.

[6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts or before other tribunals in this jurisdiction. Court appearances are governed by the provisions of Rule 38(a) of this Court's Rules concerning admission *pro hac vice*. This Court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or designated courts or other tribunals in this jurisdiction without need for such *pro hac vice* admission. If such an authorization is included, any fees for securing admission *pro hac vice* shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by the major disaster have ended. Furthermore, withdrawal from a court appearance is subject to the provisions of Rule ER 1.16 of the Arizona Rules of Professional Conduct.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of this Rule is disbarred, suspended from practice or

otherwise subject to a public disciplinary sanction that would restrict that lawyer's ability to practice law in any other jurisdiction.

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